

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE**

**Call to Order:** By **CHAIRMAN JEFF PATTISON**, on February 5, 2003 at  
8 A.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jeff Pattison, Chairman (R)  
Sen. Bill Tash, Vice Chairman (R)  
Sen. Edward Butcher (R)  
Rep. John Musgrove (D)  
Sen. Linda Nelson (D)

**Members Excused:** Rep. Rick Ripley (R)  
Sen. Debbie Shea (D)

**Members Absent:** None.

**Staff Present:** Kelly Gorin, OBPP  
Gary Hamel, Legislative Branch  
Elaine Olsen, Committee Secretary  
Doug Schmitz, OBPP

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape time stamp refers to the material which follows.

**Committee Business Summary:**

Hearing & Date Posted: Department of Environmental Quality  
Overview, 2/5/2003  
Executive Action: None.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 13}***

**Gary Hamel** presented the Committee with the Department of Environmental Quality (DEQ) General Fund starting point outline.

**EXHIBIT(jnh25a01)**

**Jan Sensibaugh, Director, DEQ,** presented the Committee with a handout on the Department's web page.

**EXHIBIT(jnh25a02)**

**Tom Livers, Deputy Director, DEQ,** explained the Resource Indemnity Trust (RIT) funds that are expended by DEQ. The agency shares in three accounts that are funded by the interest on the RIT after the eight primary accounts receive direct appropriations. The three funds are Reclamation and Development, HazWaste CERCLA, and the Environmental Quality Protection (EQP) fund.

**Tom Livers** said that the agency receives some funds from the Resource Indemnity Groundwater Assessment (RIGWA) tax and from the orphan share account. Orphan share is used for cleanup at sites that have a variety of owners, some of whom are unable to meet their share of the reclamation costs. DEQ has requested two bills this session that will impact the DEQ funding sources. SB103 would transfer \$600,000 out of orphan share to help meet some reserve constraints in the HazWaste CERCLA and EQP fund. HB10 provides for the debt service for the general obligation bonds DEQ is preauthorized to sell to meet the ten percent match required at the Libby asbestos Super Fund Site.

**SEN. NELSON** asked for details on the State's request to advance the priority of the Libby cleanup on the federal schedule. **Tom Livers** said that a state has a one-time-only opportunity to request a project be moved ahead on the cleanup schedule.

***{Tape: 1; Side: A; Approx. Time Counter: 13 - 24}***

**Tom Livers** said DEQ has estimated the total cost of the Libby project at \$70 to \$80 million. The debt service on the bonds needed for the ten percent match would be about \$700,000. To ease the burden on the RIGWA taxes, DEQ worked with EQP to establish the total of funds needed for the next biennium only, and subsequently reduced the bond issue to \$5 million for the biennium. This reduced the debt service to \$430,000, thus reducing some of the pressure on the other accounts funded through the RIGWA taxes. The Department proposes to delay work

on some abandoned mine reclamation projects funded through the Resource and Development Grant program if it appears the funding is in trouble.

**CHAIRMAN PATTISON** asked if DEQ's share of the cleanup entailed work on state and federal land. **Tom Livers** said the state share will be primarily focused on homes and yards. **CHAIRMAN PATTISON** asked what authority DEQ has on the cleanup at the Zortman Landusky mine reclamation project. **Tom Livers** said the state has an obligation for part of the cleanup at the mine. DEQ is working to find appropriate funding sources. **Director Sensibaugh** said DEQ can work on Super Fund sites that include both state and federal land.

**Tom Livers** said RIT funding is also directed to the Permitting Division, Remediation Division, Planning Division, Enforcement Division and to the attorney pool. **SEN. TASH** asked if the attorney pool was established for the defense of some of the projects. **Tom Livers** said that having the attorneys assigned to the Director's office enables the Department to track costs and task assignments. **CHAIRMAN PATTISON** asked if DEQ prorates the attorney costs when they are involved with projects involving other agencies or Tribes. **Tom Livers** said the attorneys represent DEQ's and the state's position on projects.

**SEN. BUTCHER** asked if situations arise where DEQ and the Governor's office will have attorneys working on a project. **Director Sensibaugh** said in cases where an appeal is filed against a Department decision, DEQ is solely responsible for defending that. If the action is a tort claim against the State for a decision the Department made, the Department works with the Governor's office and the Department of Administration (DOA) attorneys. DEQ defends the Department's decision; the other offices defend the tort claim. If suit is filed against a permit DEQ issued in cooperation with a federal agency, the federal agency comes to the table with their attorneys, and DEQ uses its legal staff.

**{Tape: 1; Side: A; Approx. Time Counter: 24 - 30}**

**SEN. BUTCHER** asked if the Attorney General's (AG) office becomes involved. **Director Sensibaugh** said all of the Department's attorneys are assistant attorney generals and are certified to handle those types of claims. The AG's office provides the legal counsel to the Boards that are attached to the Department. When the AG attorneys are used, they bill DEQ for their time.

**Tom Livers** described DEQ's Central Management Program highlighting the attorney pool, the transfer of activities under the Montana Environmental Policy Act (MEPA), and the reduction of the internal services rate. Five attorneys remain assigned to the Remediation Division because many of the Division's projects include cost-recovery.

**{Tape: 1; Side: B; Approx. Time Counter: 1 - 10}**

**Tom Livers** said the Central Management Division includes the director, deputy director, administrative officer, the MEPA Unit, the Legal Unit, public affairs coordinator, and the Personnel Unit. The Financial Services Unit and the Information Technology Unit work out of the Director's office. He outlined the units' responsibilities.

**Tom Livers** said the primary funding for the Central Management Program is the proprietary fund which is 72 percent of the budget. State Special Revenue makes up 14 percent of the funding, eight percent is federal special revenue, and General fund comprises about six percent of the budget. About \$554,000 in General Fund goes to The Board of Environmental Review, the attorney pool, and MEPA Unit. Some of the expenses incurred in the preparation of environmental impact statements (EIS) can be charged back to the applicant. Environmental assessments (EA), however, cannot charge back.

**Tom Livers** said the bulk of the work is EA which range from check lists to complex analysis. EA are considered an obligation of the State and are therefore funded by General Fund. DEQ has two FTE dedicated to MEPA work. Challenges to decisions based on the EA are increasing.

**CHAIRMAN PATTISON** asked about the legal challenges to the "clean and healthful" term in the State Constitution. **Director Sensibaugh** replied that in addition to the scientific and environmental part of the application evaluation, the Department does the environmental review which evaluates the impacts of that project on the environment, economy, and sociology of the community. Environmentalists are challenging DEQ reviews. They are claiming that the Department is not making an independent agency decision regarding whether the project is really needed because it is beneficial to the State and the environmental degradation that is allowed under the law in the permitting process is permissible because the project is important to the State.

**Director Sensibaugh** said that DEQ does not feel that the Department has the authority to make the "clean and healthful" decision as an agency because DEQ does is responsible for implementing the laws passed by the Legislature. REP. OLSEN is sponsoring a bill that would remove the DEQ's responsibility to do a "clean and healthful" EA in addition to the standard EIS. The proposal would not affect DEQ's permitting or the MEPA EIS responsibilities.

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**DP1**

**Tom Livers** said DP1 was a request for an increase of \$2,870 in General Funding each year of the biennium for anticipated increase in workload by the hearings officer assigned to the Board of Environmental Review. The request would also fund an increase in Board travel expenses. The Board is comprised of seven appointees and it meets every two months. The base amount of funding is \$43,362 per year.

**SEN. NELSON** asked if Board members had to represent certain segments of industry. **Director Sensibaugh** said it is statutorily required that said the Board include certain professions such as a health professional and a hydrologists. Board members have to come from different regions in the state.

**DP75**

**Tom Livers** said the negative decision package is to reduce operating costs to cover personal services costs of the alternative pay plan for the attorney pool. It is a reduction in General Fund and state and federal special funds in the amount of \$18,554 for each year of the biennium. In response to a question from SEN. BUTCHER, **Tom Livers** said that the total budget for the attorney pool is about \$1.5 million for the biennium.

*{Tape: 1; Side: B; Approx. Time Counter: 17 - 24}*

**SEN. TASH** asked about the Leaking Underground Storage Tank (LUST) trust. **Tom Livers** said the fund is for underground storage tanks that don't qualify for the State Petroleum Release Compensation fund. **Sandi Olsen, Remediation Division, DEQ**, said LUST Trust funds are used in cases where the owner/operator is recalcitrant or not in compliance and possibly insolvent. To qualify for the Petroleum Storage Tank Compensation Fund reimbursement, the owner/operator of the tank needs to be in compliance. The LUST trust is comprised of \$800,000 from EPA grant.

**DP79**

**Tom Livers** stated that DP79 was a request for \$125,000 in spending authority for the Environmental Rehabilitation and Response Account which deals with small contaminated sites that have no other sources of cleanup funding. Funding comes from State Special fund including fines, penalties and bond forfeitures.

**DP3**

**Tom Livers** said DP3 was a request for a base adjustment in the attorney pool. Operations funds were not fully expended because of staff vacancies. If approved the request would return \$46,707 and \$50,680 to the base during FY04 and FY05 respectively.

**CHAIRMAN PATTISON** asked how many attorneys are in the Central Management Division when they are fully staffed. **Tom Livers** replied DEQ would have 15 attorneys in the Department when fully staffed.

*{Tape: 1; Side: B; Approx. Time Counter: 24 - 30}*

**Gary Hamel** commented that in each program DEQ will be requesting a base adjustment plus an adjustment for the alternative pay plan. The base adjustments arise because the operations costs were not fully expended when programs are not fully staffed. The Department is anticipating full staffing in those areas over the next biennium so they are requesting additional funding. The alternative pay plan adjustments are reductions in base expenditures to offset increases in personal services resulting from the alternative pay plan.

**Tom Livers** said the Department is presenting the offsetting decision packages (DP) to allow the Committee to see the full effects of the alternative pay plan.

**Doug Schmitz, OBPP**, said the administration required any agency that converted to the alternative pay plan to provide a like amount in reductions.

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**DP88**

**Tom Livers** stated that the request was to restore a one-time-only, biennial appropriation of \$500,000 in federal grant money to consolidate data, catalogue entities and data sharing with other government agencies through the department enterprise database. The grant has been received and the request is for the spending authority.

**NP200**

**Tom Livers** said the new proposal would establish the MEPA Unit within the Director's office. The request is for \$123,000 per year of General Fund and \$1 million dollar biennial appropriation of State Special Funds. The \$1 million request is for authority to spend funds if a MEPA EIS comes in to the Department. Two FTE are staffed. The third position would be staffed and funded should an EIS come in. Two other DPs will be presented that will offset the costs of this request. The DPs will result in a net reduction in General Fund.

**REP. RIPLEY** asked if the FTE represented three new positions.

**Tom Livers** replied that the positions already exist within the MEPA program in the Permitting Division. **CHAIRMAN PATTISON**

asked why the FTE had been moved into the Director's office. **Tom Livers** said that because of the increased challenges to Department EIS decision, the staffing was moved to provide better communications and control. Centralization of MEPA activities will allow all the Division involved with MEPA to have better access to the Unit.

**NP8013**

**Tom Livers** stated NP8013 proposes a \$150,000 funding switch from General Fund to State Special Revenues to fund outside attorney fees and court costs in civil proceedings. It is a contingency fund. The Department is requesting legislation to allow penalty revenue from numerous environmental laws administered by the agency to be deposited to a State Special Revenue account. The vacant FTE would be funded by applicant fees if a large project comes in to the Department.

**{Tape: 2; Side: A; Approx. Time Counter: 11 - 23}**

**Ann Danzer, Chief Financial Officer, DEQ,** said DEQ has one proprietary fund which is an indirect cost recovery fund to finance the Director's office, financial services, and information technology services. The object of the fund is to recover costs to fund the necessary ongoing operations for the Central Management program. DEQ is requesting a cap of 22 percent which is slightly higher than the anticipated negotiated rate with EPA. The major cost factors are personal services and fixed costs which includes tort liability coverage.

**Ann Danzer** reported that the agency has seen an increase in insurance costs. Other fixed costs include warrant writer, payroll and audit fees.

**SEN. BUTCHER** asked who was paid for liability insurance. **Ann Danzer** replied that the payment is to Risk Management in the Department of Administration (DOA). **SEN. BUTCHER** asked why DEQ had to carry liability insurance. **Ann Danzer** stated that if the suit is against DEQ's decision, the Department is responsible. If the suit is a tort claim against the State, the Department defends the agency's actions and the Tort Claims Division defends the State. If the court determination goes against DEQ, the insurance would pay the costs. Insurance costs are based on potential liability.

*{Tape: 2; Side: A; Approx. Time Counter: 23 - 30}*

**Doug Schmitz** said that the State is self-insured. When a court decision goes against the State, any award is paid out of the tort liability pool. **Director Sensibaugh** replied to a variety of concerns raised by **SEN. BUTCHER**. She stated that DEQ is currently involved with two lawsuits which include a tort claim. Individuals in Libby are suing the State because they believe the State should have known the asbestos would harm their health. The second involves the Pegasus bankruptcy. The company that the bankruptcy decision designated to operate the water treatment systems is suing the State and DEQ for \$18 million for defamation of character.

**Doug Schmitz** said the General Government Section A of the legislative process deals with the tort claims under the DOA. The overview should be presented in the House Appropriations Committee.

**REP. MUSGROVE** asked for additional information on the audit fees. **Ann Danzer** replied that the Legislative Auditor conduct an audit once every two years and they charge those costs to the Department.

*{Tape: 2; Side: B; Approx. Time Counter: 1 - 7}*

#### PL2

**Tom Livers** said the Department is requesting a base adjustment of \$243,441 for each year of the biennium to reinstate funds. The request restores the budget to full staffing levels. **Gary Hamel** said the Committee would review the overall proprietary rate. If the rate is approved, all the attendant DPs would be approved.

#### PL67

**Tom Livers** said PL67 is a request for \$75,000 for FY04 only to complete database development. In addition the proposal would provide \$25,000 each year of the biennium to Information



Technology Services Division (ITSD) for ongoing database maintenance.

**PL72**

**Tom Livers** stated that PL72 is a request for \$50,000 in FY04 and \$10,000 in FY05 for funding for database development. **CHAIRMAN PATTISON** asked if the DP related to the request for the database grant. **Tom Livers** said the grant related to the one-stop permitting between agencies. This request is specific to DEQ's internal budgeting process.

**PL89**

**Tom Livers** said the request is for a reduction of \$52,500 each year of the biennium in the proprietary account in operating costs to cover the personal services cost of the alternative pay plan in the Central Management program.

*{Tape: 2; Side: B; Approx. Time Counter: 7 - 16}*

**NP56**

**Tom Livers** stated the new proposal was a request to add one FTE and operating costs in the personnel unit. Funding would be approximately \$47,400 for each year of the biennium and would add one FTE.

In response to a question from SEN. BUTCHER, **Gary Hamel** said that the Committee could direct the Department to set a proprietary rate at something less than the 23 percent requested. The Department would then have to negotiate a rate equal to or less than the cap that the Committee had set. By approving the proposed 23 percent rate, the Committee agrees to fund all the DPs that contribute to that rate. If the Committee did not want the Department to become involved in some of the proposed functions, they could direct the agency to adjust the rate accordingly to eliminate those DPs from the proposed rate.

**REP. MUSGROVE** asked if there was a casual link between keeping the number of FTE down at DEQ and the number of lawsuits that might come their way as a result of not being able to do their jobs. **Tom Livers** responded by saying it would be difficult to draw a direct correlation between the number of FTE and the number of law suits. Substantial staff reductions would impact the agency's ability to do their work. The addition of a safety officer as proposed in NP56 would be a cost containment issue by limiting the kind of risks to which the staff is exposed.

**CHAIRMAN PATTISON** asked for a list of vacant FTE. **Director Sensibaugh** provided the list. **Tom Livers** reviewed the open

positions in the Central Management Division. Referencing SB233 which would use penalty money for the legal contingency fund. **Tom Livers** said the costs are incurred and the agency is responsible for the debt. If the bill does not pass, DEQ may have to approach the Committee for other funding.

**EXHIBIT(jnh25a03)**

*{Tape: 2; Side: B; Approx. Time Counter: 16 - 30}*

**Art Compton, Administrator, Planning, Prevention and Assistance Division, DEQ**, said the Division was responsible for the nonregulatory programs. The primary focus of the Division is to provide technical, engineering and finance expertise to a wide-range of activities dealing with local governments, and state-wide advisory groups such as watershed groups.

**EXHIBIT(jnh25a04)**

**Art Compton** stated that within the Division is comprised of four bureaus. The Technical and Financial Assistance runs the State's developing funds programs, provide engineering and financing for community drinking water and waste water systems, and houses the state energy program. The Pollution Prevention Bureau houses the Small Business Assistance work units, and the source water protection program. The Total Maximum Daily Load (TMDL) program is located in the Resource Protection Planning Bureau and in the Monitoring and Data Management Bureau. The Monitoring and Data Management Bureau is also responsible for the state-wide network of air quality monitoring equipment.

**Art Compton** said the Resource Protection Planning Bureau provides economic and energy expertise. The air quality program has to do with state efforts to identify noncompliance areas in the state.

**Art Compton** reported that about 14 percent of the Planning Division's funding is General Fund. Smaller portions are made up of State Special RIT and fee money. Over 75 percent of the Division's funding comes from federal funds. The General Fund is used as a required match or a means to leverage federal funds. A number of the programs are federally delegated.

**Art Compton** provided a detailed review of the Division's General Fund appropriations which include the Business Assistance and Policy Management function, bioenergy which uses biomass to promote alternative fuels, and water quality policy and standards.

**EXHIBIT(jnh25a05)**

*{Tape: 3; Side: A; Approx. Time Counter: 1 - 11}*

**Art Compton** stated the Division receives General Fund for work related to in water quality standards development for coal bed methane extraction. General Funds are used for programs related to air issues under the Performance Partnership Grant (PPG).

**Art Compton** said that energy and economics work areas receive General Fund for programs which provide technical data and economic expertise to a host of different organizations.

**Art Compton** stated that the Division has made several cuts which have reduced the Division's share of General Fund.

*{Tape: 3; Side: A; Approx. Time Counter: 11 - 17}*

**Art Compton** said the Division is responsible for watershed management, the development of watershed restoration plans, TMDL and nonpoint source programs. The watershed management program oversees water quality monitoring, TMDL source assessment and monitoring work and water quality standards development.

**Art Compton** said the TMDL program does the water quality monitoring and provides data to the watershed planners and conservation districts. The General Funds are used to match federal funding.

**CHAIRMAN PATTISON** asked if the State regulations are superceded by the federal requirements. **Art Compton** said the air and water quality programs are federally delegated; the funding is federal funds. The State receives federal guidance in the development of standards and regulations in respect to air and water quality. Montana's air and water quality standards have to be approved by Region Eight of the EPA. Montana's air and water quality standards stand alone.

*{Tape: 3; Side: A; Approx. Time Counter: 17 - 30}*

**REP. RIPLEY** asked is the reductions in General Fund were made up with federal funds. **Art Compton** said the reductions resulted in less money being available for programs. The division's target reduction in General Fund was \$1.5 million. Positions were left vacant, FTE were eliminated, and funding switches were made.

**SEN. TASH** said Montana is now defending the State's compliance with Federal Clean Water Act because the State is not completing the TMDL fast enough. HB89 is designed to extend the time-frame to complete the TMDL. **SEN. TASH** said computer modeling could move the program forward because the on-the-ground program is taking too long. **Art Compton** said to be successful in the TMDL

program, Montana is going to have to make use of the modeling approach. The 900 streams on the impaired list were divided into 91 sub-watersheds with the intent of taking the on-the-ground approach to the stream reaches that the landowners were really concerned about. The other streams in the drainage could be studied through computer modeling.

**SEN. TASH** asked if the computers studies could be done internally without statutory change. **Art Compton** said that the effort has to be consensus-based. Eighty percent of the impaired water bodies are impaired by nonpoint sources, generally runoff. Nonpoint source pollution is not regulated so remedies have to be voluntary.

*{Tape: 3; Side: B; Approx. Time Counter: 1 - 7}*

**Art Compton** reported the TMDL schedule. The 91 watersheds have to be completed by 2007. HB89 would extend that to 2012. A Federal District Court order affirmed the original legislative schedule. If HB89 passes, the Federal District Court must affirm the new schedule. The program is permanent and as soon as the development is completed, the landowners want technical and financial assistance to implement best management practices.

**SEN. TASH** stated that the EPA and the Court have accepted the monitoring programs. He asked if that would qualify the State's ability to complete the program in the original time allowed.

**Art Compton** said he did not think so. DEQ completed four of the Court required eight watersheds in 2002. At full staffing, the Department can do eight per year but not the 12 or 15 that the original schedule anticipates. It is estimated that to meet the original schedule DEQ would need a TMDL staff of 52. The Division has 16 staff in the program.

*{Tape: 3; Side: B; Approx. Time Counter: 4 - 18}*

#### **DP4**

**Art Compton** said DP4 is a request to reestablish the base budget for operations for five FTE that were vacant. The DP completes a funding switch of \$100,000 from General Fund to federal funds.

#### **DP5**

**Art Compton** said the request is a reduction that would fund pay plan increases by reassigning vacant positions.

**DP6**

**Art Compton** stated that the DP would reestablish the base budget in the Monitoring and Data Management Bureau. Operating expenses for six FTE would be restored.

**DP7**

**Art Compton** stated the DP would fund pay increases by a reduction in the purchase of equipment, a delay in hiring of FTE and a decrease in contracted services.

**DP8**

**Art Compton** reported that DP8 would reestablish the base budget for the Technical and Financial Assistance Bureau. The base adjustment would restore the operating expenses. The request is for about \$388,500 each year of the biennium.

**DP9**

**Art Compton** stated the DP was a request to reestablish the base budget in the Pollution Prevention Bureau. The request would decrease the revenue for the Source Water Protection Program and a corresponding decrease in contracts that will be issued over the biennium. Increases are requested in operating expenses for FTE that went vacant for part of FY02.

**DP10**

**Art Compton** said the request would fund pay increases associated with the alternative pay plan. To fund the pay increases, the Department would delay the hiring of FTE and some interns.

**DP11**

**Art Compton** said DP11 is a request to reestablish the base budget for the Administrative and Fiscal Unit. The DP would result in a funding switch from General Fund to State Special Revenue. In addition, one FTE would be eliminated and \$25,000 of General Fund used to match federal funds would be eliminated.

**DP12**

**Art Compton** described the DP which would fund pay increases associated with the alternative pay plan by delaying the hiring of FTE, reducing contracted services and reducing the purchase of equipment.

**DP43**

**Art Compton** said that DP43 is a request for authority to spend federal EPA grant funds to assist meeting the court-mandated TMDL schedule. The majority of the funding would be used for contracted services to meet the workload necessary to comply with the Federal District court schedule.

***{Tape: 3; Side: B; Approx. Time Counter: 18 - 30}***

**DP60**

**Art Compton** reported that DP60 includes a request for a biennial appropriation authority to spend Universal Services Benefits (USB) Charge to fund low-income assistance, weatherization, energy efficiency and renewable energy development.

**DP62**

**Art Compton** described DP62 which includes a request to add one FTE to provide technical assistance to community water and wastewater systems. The proposal would fund one FTE to administer the EPA's State Tribal Assistance Grant (STAG) program projects. The projects address water and wastewater public facility needs in Montana.

**DP61**

**Art Compton** said the DP is for a language appropriation for \$150,000 for flexibility in the management of the State Revolving Fund Programs which include federal capitalization grants, bond proceeds and State Special Revenue Funds. Language is necessary to move the authority from federal to state funds if appropriate.

**Doug Schmitz** said that the DP is the companion language to that reviewed in the Department of Natural Resources and Conservation (DNRC) budget. DEQ provides the technical assistance and DNRC provides the financial assistance.

***{Tape: 4; Side: A; Approx. Time Counter: 1 - 8}***

**John Arrigo, Administrator, Enforcement Division, DEQ,** said the Division has 14 FTE and is structured to implement complaint management and case management. Prior to the reorganization, the direction of complaints was very confusing. With the Division handling the Complaint Management section, complaints about water, air and waste are investigated by one source. The goal is to resolve the citizen's complaint in 90 days.

**John Arrigo** stated that the responsible party is sent a letter outlining what needs to be done to correct the situation. They may be referred to the appropriate permit program. The situation is monitored to make sure the citizen's concerns are resolved. The complaint may be elevated to a formal enforcement action for the Case Management Bureau.

**John Arrigo** said before an enforcement action can be initiated, the Director must approve the action. The Division works to

bring people into compliance and accept a penalty where appropriate. The goal is to process the enforcement actions in 120 days. If a violator is not compliant, the action is taken into court.

**John Arrigo** emphasized that use of the database is critical to managing all the complaint information. Enforcement shares information across programs on a daily basis. The database is used to monitor corrective actions or payment schedules on violations. The agency provides a report to the legislature every two years on the status of violations and enforcement. That information is derived from the data base.

***{Tape: 4; Side: A; Approx. Time Counter: 8 - 18}***

**John Arrigo** gave an overview of the types of complaints and enforcement cases the Division handles. A large number of cases relate to public water supply. Montana has approximately 2,000 public water supplies including small sources such as restaurants and bars. If monthly monitoring requirements are not met, the Division has to take an enforcement action. Underground storage tank complaints make up a large part of the Enforcement Division complaints. The Division also works with air quality and mining compliance.

**John Arrigo** outlined the history of complaint cases. In some cases, compliance takes place over a period of years. The Division collects penalties which are deposited in the General Fund and Special Revenue. The Alternative Energy Revolving Loan account receives penalties from the Air Quality Act which are used for low interest loans to businesses and individuals for alternative energy generation projects.

**John Arrigo** said the Division's use of General Fund has decreased. The budget proposal for the next biennium would be 43 percent General Fund, 34 percent federal funds and 23 percent State Special Revenue. The Department feels General Fund should be used for enforcement because it is not possible to predict what areas will require the Division's time. Also, enforcement cannot be tied to a single type of funding source. Industry has expressed that they do not want penalties to fund enforcement. The work of the Enforcement Division benefits all Montanans so General Fund is an appropriate source for the Division.

***{Tape: 4; Side: A; Approx. Time Counter: 18 - 25}***

**REP. MUSGROVE** asked about legislative assistance for landlords who are impacted by meth labs on their rental properties. **Ed**

**Thamke, Chief, Complaints Management Section, DEQ,** said DEQ has no statutory authority for the cleanup of drug labs in residences. DEQ does a great deal of work with the outdoor environmental impacts of meth labs. DEQ does not have the industrial hygienist on staff to handle the combination of health impacts and the sort of cleanup that would be necessary on residences. The DEQ Enforcement Division has no authority on the condemnation of properties where meth labs have been discovered.

**SEN TASH** asked if municipal water supplies or aquifers have been threatened by discharges from drug labs. **Ed Thamke** replied, "Not yet." The large-scale labs have not been found in Montana yet. Soils and waters tested have not demonstrated a level that would require cleanup.

*{Tape: 4; Side: A; Approx. Time Counter: 25 - 30}*

#### DP13

**John Arrigo** said DP13 was a base adjustment to restore FY02 authorized amounts where increased expenditures are anticipated. Funds would be used to support database conversion, operation and maintenance.

**CHAIRMAN PATTISON** asked how accessible the database was to the public. **John Arrigo** said the public cannot access the database. **Robin Trenbeth, DEQ,** described the security in place.

**SEN. TASH** asked if the verification of complaints required site visits. **John Arrigo** replied that about 30 percent of the complaints require site visits.

**REP. RIPLEY** asked about the negative balance in the RIT fund. **Gary Hamel** said the Division is proposing to use \$9,500 over the biennium from the RIT and Reclamation and Development funds. These funds are already projected to be negative.

*{Tape: 4; Side: B; Approx. Time Counter: 1 - 5}*

**Tom Livers** said the executive is aware of the pressures on the various RIT accounts. The inflow and the interest earnings are reduced. DEQ and DNRC are doing a lot of grant management to assist with the cash flow situation. HB177 would divert \$1.8 million of inflow into the Reclamation and Development account. DEQ has offered to pull its Abandoned Mines grants out of the Reclamation and Development grant program.

**Doug Schmitz** said some grants may be held up until the cash flow has been addressed.



**{Tape: 4; Side: B; Approx. Time Counter: 5 - 12}**

**DP13**

**John Arrigo** concluded that the Division anticipates the need for revenue for legal service fees and costs and for charges associated with contested enforcement cases.

**DP14**

**John Arrigo** said the DP was a reduction in operating costs to cover the increased personal services costs of the alternative pay plan. The reduction is about \$54,000 each year of the biennium with General Fund being reduced by \$27,100 each year.

**DP73**

**John Arrigo** stated that the DP was withdrawn.

**DP8013**

**John Arrigo** said the DP was tied to SB233 and has been modified since it was first drafted. The proposal would allow the Department to deposit all of the penalties collected under the Clean Air Act into the General Fund which would result in an increase in the General Fund. Revenue in the General Fund could be increased by as much as \$280,000 over the next biennium. With that increase in General Fund, the Department does not see a need for DP8013. The second part of the DP is a funding switch. DEQ believes they can obtain \$20,000 of additional federal funds in the next biennium to replace a like amount of General Fund.

**EXHIBIT (jnh25a06)**

February 5, 2003

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**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JEFF PATTISON, Chairman

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ELAINE G. OLSEN, Secretary

JP/EGO

**EXHIBIT** (jnh25aad)